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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970.

No. 1430

HAROLD L. BENEDICT; LOCAL 241, COUNCIL 44, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO; VIRGINIA KING; MILLIE ADAMS; NONA ROWDEN; RUTH MONROE; MARY KELLY; SALLY SCHOAF; EVELYN DEFREITAS; ELEANOR LARGENT; CHERRY BUCHANAN; DOROTHY SUDDETH; SHARON STEAR; ROBERT HOOPER AND RUTH HINNERS,

Petitioners,

vs.

COUNTY OF PEORIA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

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IN THE

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No. .....

HAROLD L. BENEDICT; LOCAL 241, COUNCIL 44, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO; VIRGINIA KING; MILLIE ADAMS; NONA ROWDEN; RUTH MONROE; MARY KELLY; SALLY SCHOAF; EVELYN DEFREITAS; ELEANOR LARGENT; CHERRY BUCHANAN; DOROTHY SUDDETH; SHARON STEAR; ROBERT HOOPER AND RUTH HINNERS,

Petitioners,

vs.

COUNTY OF PEORIA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

Petitioners, Harlod L. Benedict; Local 241, Council 44, American Federation of State, County and Municipal Employees, AFL-CIO; Virginia King; Millie Adams; Nona Rowden; Ruth Monroe; Mary Kelly; Sally Schoaf; Evelyn Defreitas; Eleanor Largent; Cherry Buchanan; Dorothy Suddeth; Sharon Stear; Robert Hooper and Ruth Hinners, hereby respectfully pray that a writ of certiorari issue to review the decision of the Supreme Court of Illinois

entered in this cause on December 4, 1970, affirming the contempt sentences in the order of the Circuit Court of Peoria County, Illinois, in this cause, entered on January 2, 1969.

OPINIONS BELOW.

The decisions of the Circuit Court of the Tenth Judicial Circuit of Illinois (Appendix A), entered on January 2, 1969, and of the Supreme Court of Illinois (Appendix B), entered on December 4, 1970, are not reported.

JURISDICTION.

The decision of the Supreme Court of Illinois was entered on December 4, 1970. This Court's jurisdiction is invoked under 28 U. S. C. Sec. 1257(3).

QUESTIONS PRESENTED.

1. Whether the Thirteenth Amendment to the United States Constitution prohibits the enforcement by contempt proceedings of an injunction issued by a state court requiring public employees to submit to a condition of involuntary servitude.

2. Whether the First and Fourteenth Amendments to the United States Constitution prohibit contempt findings against an employee of a public employee union based, not upon overt conduct engaged in by him, but, rather, upon his position as a union representative.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED.

The constitutional and statutory provisions applicable to this case are as follows:

The United States Constitution, Amendment I, provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The United States Constitution, Amendment XIII, provides, in pertinent part, as follows:

> Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been convicted, shall exist within the United States, or any place subject to their jurisdiction.

The United States Constitution, Amendment XIV, provides, in pertinent part, as follows:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State in which they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

The Illinois Anti-Injunction Act, Illinois Revised Statutes, Chapter 48, Section 2a, provides as follows:

> 2a. *Issuance of injunctions prohibited.* Sec. 1. No restraining order or injunction shall be granted by any court of this State, or by a judge or the judges thereof in any case involving or growing out of a dispute concerning terms or conditions of employment, enjoin-

ing or restraining any person or persons, either singly or in concert, from terminating any relation of employment or from ceasing to perform any work or labor, or from peaceably and without threats or intimidation recommending, advising, or persuading others so to do; or from peaceably and without threats or intimidation being on any public street, or thoroughfare or highway for the purpose of obtaining or communicating information, or to peaceably and without threats or intimidation persuade any person or persons to work or to abstain from working, or to employ or to peaceably and without threats or intimidation cease to employ any party to a labor dispute, or recommend, advise, or persuade others so to do.

STATEMENT OF THE CASE.

The County of Peoria operates the Belwood Nursing Home (hereinafter referred to as "the Home") for the benefit of the residents of Peoria County, Illinois. (R. 7-8) Local 241, American Federation of State, County and Municipal Employees' International Union (hereinafter referred to as "the Union") has been the bargaining representative of the nonsupervisory employees of the Home for many years. (R. 12) In 1968, a dispute arose between the home and the Union pertaining to the wage structure for such employees for the fiscal year 1969. (R. 84-85) The Home, through its officials, was apprised and knowledgeable well in advance of November 30, 1968 that an employee walkout might take place on that date. (R. 39, 86-87, 98-99)

On Wednesday night, November 27, Thanksgiving eve, at 8:00 P.M., a notice was served upon the financial secretary of the Union that a hearing would be held on November 29, at 10:00 A.M., on a Complaint for Injunction to be filed by the County of Peoria against certain defendants, including the financial secretary and the Union. (R. 62) At 3:10 P.M. of the same day, Harold Benedict, a staff representa-

tive employed by Council 44, American Federation of State, County and Municipal Employees and assigned to service the local union, received similar notice which was communicated by a telephone call to Benedict. (R. C2, 51)

On November 29, no defendants appeared in Court and the trial judge, without hearing, entered an ex parte order, providing:

> "(1) Be it and it is hereby ordered that the request of the prayer of Plaintiff that Defendants herein jointly and severally be restrained by injunction from conducting a strike against the County of Peoria, that the Defendants jointly and severally be enjoined from conducting any walkout or work stoppage at the Peoria County Bel-Wood Nursing Home, that Defendants jointly and severally be enjoined from setting up any picket lines upon the property of the Peoria County Bel-Wood Nursing Home in Peoria County, ~~*that Defendants be ordered by this Honorable Court to return to their employment with the Peoria County Bel-Wood Nursing Home,*~~ be granted." (R. C17)

The eight nurses aides on the 11:00 P.M. to 7:00 A.M. November 30-December 1 shift clocked out at midnight and departed from the Home. (R. 63-64) Between November 30 and December 6, 1968, no employees in the bargaining unit worked at the Home and a number of them were observed picketing the Home. (R. 66, 81) Evidence was adduced and Harold Benedict admitted that he had driven up to the Home and spoken to the pickets who were members of the Union that he was employed to assist; however no overt conduct or act of any kind such as carrying a picket sign or otherwise participating in the picketing activities was attributed to Benedict by any witness. (R. 67, 81, 97, 100, 104, 106-107)

Charles Boyer, superintendent of the Home, testified pertaining to the status, during the period between November 30 and December 6, 1968, of the eighty-eight defendants

who had been employed by the Home. He related that none of these individuals worked for the Home during this period; nor did they indicate that they had any desire to be employed by the Home for the wages that the Home was offering to pay. Boyer added that he was legally free to employ any persons he desired to perform the work in question at the Home. He conceded that the only reason he had to assume that these eighty-eight individuals were employees of the Home during this period was that they had been so employed prior to November 30. According to Boyer, they had been employed under contracts at will with either side being entitled to terminate the employment relationship without advance notice. (R. 42-45, 49)

On December 3, 1968, Plaintiff filed a Petition for Rule to Show Cause why certain individuals should not be held in contempt of the November 29 injunctive order. (R. C108-C110) On December 6, 1968, the Trial Court entered in lieu of the November 29 order an Interim Order providing for limited picketing and the furnishing by the Union of a skeletal work crew in order to maintain minimal patient care in the Home. Leave was given to Defendants-Respondents to file motions and supporting briefs to dismiss the complaint, vacate the injunction and dismiss the rule to show cause. (R. C134-C135)

On January 2, 1969, following a hearing, the Trial Court made the preliminary injunction permanent and entered contempt findings against the Union, those individual Defendants-Respondents who had been found to have picketed while the preliminary injunction was in effect and Harold Benedict. The sentences for contempt were as follows: (a) the Union was fined $2,500.00; (b) the thirteen individual members of the Union, who had been found to have struck and picketed in violation of the injunctive order, were each fined $50.00, the fine to be suspended upon compliance with the permanent injunction entered on

January 2, 1969; and (c) Benedict was fined $1,500.00 and sentenced to 60 days in jail. (C144-C149)

When entering this order, the Trial Court responded to the defense that had been advanced that defendants who had been employed by the Home did not want to work there for the wages offered and that they had rejected employment upon such terms effective November 30, 1968:

> "As to this 13th Amendment about involuntary servitude, it is absolutely true no one can force anyone to work against their will and by holding this strike is illegal as against Peoria County, I am not ordering anyone to work against their will. Simply you must exercise an option. You apply for a job and work there according to what they believe their budget subscribes or you resign and find a job elsewhere and let them find someone else to work at that particular job and pay. We are not balancing equations between labor and management. We are simply faced with a balance of equations between welfare of employees, who, as Mr. Feldman so amply stated are working for under $4,000. We all have sympathy for people in those pay scales and also for the patients, the 236 patients. I think the monetary welfare is second to the welfare of the people. I think it is obvious it should not be necessary to comment about it. I must hold the strike is illegal. I can't obviously order you back to work against your will. . . ." (R. 116-117)

The defendants then left the Court room and reconfirmed that they did not wish to work for the Home at the wages offered by tendering written resignations to the Home.

The Trial Court order was duly appealed to the Supreme Court of Illinois. (R. C153-C155) That Court issued its Opinion on December 4, 1970, holding that the permanent injunction was invalid under Illinois' Anti-Injunction Act (Ill. Rev. Stats., Ch. 48, Sec. 2a) which prohibited the issuance of such injunctions in labor disputes, but uphold-

ing the sentences for contempt of the preliminary injunction dated November 29, 1968.

HOW FEDERAL QUESTIONS WERE PRESENTED.

(a) The Thirteenth Amendment question was argued before the Trial Court at the hearing on January 2, 1969, which led to the contempt findings in the order of that date. The Trial Court explicitly rejected the argument in open court prior to entering its contempt orders. (R. 116-117) This question was raised before the Supreme Court of Illinois as Point III of the Argument Section of our Brief. The argument was strongly pursued on oral argument before the Court. It was impliedly rejected by the Court in its decision which sustained the contempt findings while substantially ignoring this principal contention.

(b) The First and Fourteenth Amendment questions also were argued before the Trial Court on January 2, 1969. They were rejected by the Trial Court in open court. (R. 118) These questions were raised before the Supreme Court of Illinois as Point IV of the Argument in our principal Brief and in our Reply Brief. They were treated in the Brief of Plaintiff-Appellee at pages 9 (citing pages 97, 106 and 107 of the record) and 25-26. The state Supreme Court found factually that Respondent Benedict had violated the injunctive order in the face of the argument that there was no evidence whatsoever upon which to base such a finding.

REASONS FOR GRANTING THE WRIT.

The plight of the public employee in contemporary times, who is employed in states such as Illinois, where collective bargaining is not accorded statutory protections and procedural mechanisms, is difficult if not precarious. He is

and long has been denied the benefits achieved by his fellow workers employed in the private sector who are subject to the rights and protections provided under the Labor-Management Relations Act, 29 U. S. C. Sec. 151 et seq. If the public employee rears his head and presses his demands upon the public employer, the latter, faced with the prospect of an angry taxpaying electorate, often will not deal or bargain meaningfully with him. If he then withholds his services from the public employer, the state court is called upon by the public employer as the ultimate weapon with which to subdue the public employee. Hence, the public employee is confronted by the dual obstacles of an employer who will not bargain with him and a court that will put him in jail if he strikes. See *Board of Education of Community District No. 2* v. *Redding*, 32 Ill. 2d 567 (1965).

To this ignominious posture of the public employee in Illinois have now been added two additional burdens imposed through the utilization of the equity injunction followed by the exercise of the contempt powers by the Trial Court below. The political objective of keeping public employees in line has overridden even the historically recognized proscriptions against (a) involuntary servitude and (b) punishment, not for overt conduct, but, for the purpose of intimidating and setting an example to members of a voluntary association. It would seem to us that little argument need be advanced at this time in our constitutional history that such a situation warrants and demands the attention of this Court; it would suffice only to show that the generalizations and conclusions drawn above are supported by the record in this case.

(1) The Thirteenth Amendment Question.

It has long been recognized that the very essence of our form of government demands that the State not be empowered to force a condition of involuntary servitude upon

an unwilling citizen. *Bailey* v. *State of Alabama,* 219 U. S. 219 (1911); *United States* v. *Reynolds,* 235 U. S. 133 (1914); *Arthur* v. *Oakes,* 63 Fed. 310 (7th Cir. 1894). Although this Court in a divided decision has held that First Amendment rights may be subordinated to the requirement that an injunction, albeit unconstitutional as violative of the First Amendment, be obeyed pending a judicial determination of its validity (*Walker* v. *City of Birmingham,* 388 U. S. 307 (1967)), no Court has to this date held that Thirteenth Amendment rights ever must be forfeited even temporarily. Freedom from involuntary servitude has been characterized as a "natural liberty" the deprivation of which cannot be tolerated in a free society under any circumstances. *Arthur* v. *Oakes,* 63 Fed. 310 at 317-318.

We note at the outset that the ex parte injunction here involved constitutes a prior restraint upon First Amendment rights contrary to the standards prescribed in *Carroll* v. *President & Commissioners of Princess Anne County,* 393 U. S. 175 (1968). Although the Home and the County had considerable advance notice that a walkout would occur on November 30, 1968, they chose to wait until Thanksgiving eve to notify one member of the Union and the staff representative assigned to assist the Union that a hearing would be held in Court on the day following Thanksgiving at 10:00 A. M. The effect, undoubtedly intended, was to deprive the Union of the opportunity to obtain a lawyer not only to represent it in court but to explain to the Union members what was transpiring and to furnish advice to them so they could, with full information, make a decision as to their subsequent conduct.

The subject preliminary injunction was then issued without a hearing. It restrained the Defendants from, among other things, "conducting any walkout or work stoppage at the Peoria County Bel-Wood Nursing Home." Further

appearing on the writ, with a line of deletion running through it was the mandatory requirement "that Defendants be ordered by this Honorable Court to return to their employment with the Peoria County Bel-Wood Nursing Home." When viewed in the context of behavior protected under the Thirteenth Amendment, we submit that the vagueness and indefiniteness of the writ made it virtually impossible to determine what conduct was being enjoined and what conduct remained inviolate. Moreover, under the circumstances which the writ issued, the Defendants were deprived of the benefit of an attorney who might explain the coverage of the restraining order and respond to their questions and advise them with regard to compliance.

At midnight on November 30, 1968, the eighty-eight defendants employed by the Home terminated their employment with the Home by refusing to work there any longer for the wages the Home was willing to pay. This act was subsequently ratified by written resignations tendered to the Home on January 2, 1969. According to the testimony of the Superintendent of the Home, no incidents remained of the employment relationship that had existed between the Home and the eighty-eight employees prior to November 30, 1968. The position of these employees should be compared with that of economic strikers under the Labor-Management Relations Act who would enjoy incidents of employment as a matter of law; *Mackay Radio & Telegraph Co.*, 304 U. S. 333 (1938); *Laidlaw Corp.*, 171 NLRB No. 175 (1968), enforced 414 F. 2d 99 (1969), cert. den. 397 U. S. 920 (1970).

And yet, on January 2, 1969, the Trial Court held the Union, eight former employees of the Home and the staff representative in violation of the foregoing injunctive mandate. It would appear from the remarks stated of record by the Trial Court on January 2, 1969, as hereinbefore re-

produced (R. 116-117), that the Court had not intended by the subject order to "force anyone to work against their will." Rather, the Court was unwilling to accept their refusal to work for the Home any longer at the wages offered as the exercise of an "option" to terminate their employment. Apparently, their subsequent written resignations were considered to effectively accomplish this end since no further contempt proceedings were initiated.

We submit that, when a court tampers with Thirteenth Amendment rights, it is incumbent upon it to state with absolute clarity in the injunction writ exactly what conduct is permissible and what conduct is impermissible. When instead, the Court, acting ex parte and without a hearing, and without according to defendants the opportunity to engage a lawyer, enters a vague, indefinite and confusing restraining order requiring defendants to either forfeit their constitutional rights under the Thirteenth Amendment or otherwise act at their own peril, such an injunction cannot be enforced because of its chilling effect on the important constitutional rights involved. Public employees have no constitutional rights if they are required to play a guessing game to determine how to exercise them with the threat of a contempt sentence should their guess prove to be wrong.

(2) The First and Fourteenth Amendment Questions.

Petitioner Harold Benedict was not an employee of the Home; he was employed as a staff representative by a council of the International union and was assigned to assist the local union in its affairs. Despite the findings of both of the courts below, there is no evidence of any kind in the record that Benedict in any way violated the preliminary injunction. As to his activity, the record discloses only that he appeared with the pickets but did no

picketing; moreover, he advised the public media of what the local union was doing and communicated the offer to provide a skeletal crew of skilled aides to assure that residents of the Home received the required minimal care. The record does not disclose that Benedict in any way caused, encouraged or participated in any action which might be deemed violative of the preliminary injunction. Nor does it show that Benedict had authority of any kind with respect to the conduct of the Union or its members other than to advise and assist them in their affairs. It does not show that he was empowered to make any substantive decisions or give orders or directions to anyone. Manifestly, the due process of law requirement contained in the Fourteenth Amendment is violated when an individual is found in contempt of an order when there is no evidence to support the finding.

But much more is involved here than a due process evidentiary question. Harold Benedict was cast in the role of the "outside agitator" by the Trial Court in an effort to effectively destroy the Union and isolate the members from the Union. Contemptuous conduct was not a factor in the rulings of the Trial Court. To the members of the Union, the Court, on January 2, 1969, addressed himself as follows:

> ". . . I sincerely appreciate it, I mean this from the bottom of my heart, the full cooperation that all of us have given since we met on December 6th and engaged in the interim order which I found in order to keep the home operating and prevent a complete evacuation of the home. You folks have come back in and worked and when the County Health Doctor said that wasn't enough, you went ahead and brought it up to his standard and he was not a part of our conversation on December 6th or you would have gone along with his suggestions on that day. The court appreciates the cooperation of the union members and management,

> you have all been very cooperative. We have no complaint at all of any misconduct at the scene even though we were in a controlled strike situation, so to speak, until today." (R. 117)

The Trial Court then found the eight Union member respondents, who had been found to be striking and picketing, in contempt of Court and fined them $50.00 each, rescindable upon compliance with the permanent injunction. In contrast to the foregoing harmless tap on the wrist, the Union was fined $2,500.00 and Benedict was fined $1,500.00 and sentenced to 60 days in jail. In addition, without any foundation in the record, the Trial Court offered the following gratuity to Benedict:

> "As to the defendant, Harold L. Benedict, I feel he is the person primarily responsible in this area. The person who publicly advised that the court order be hanged, he is going to do as he pleases, and I read his past history." (R. 118)

Manifestly, the actions taken by the Trial Court had no correlation with the concept of punishment for comtemptuous conduct. The eight former employees of the Home who were found guilty of striking and picketing were in contempt if anyone was; yet the Court, in actuality, imposed no penalty at all upon them. Benedict, against whom no improper conduct had been proven, was treated as the "outside agitator" who was responsible for these "nice home folks" going wrong. He and the Union were subjected to heavy fines and he was given a jail sentence; the local employees were, in effect, told to behave themselves in the future.

The clear objective of the Court's conduct was to use its contempt powers to destroy the Union. We submit that legal processes cannot be utilized for such purposes. It has been held repeatedly in recent federal court decisions that the First Amendment guarantees and protects the right

of public employees to belong to and participate in the affairs of labor organizations. *Atkins* v. *City of Charlotte*, 296 F. Supp. 1068 (W. D. N. C. 1969); *American Federation of State, County & Municipal Employees* v. *Woodward*, 406 F. 2d 137 (8th Cir. 1969); *McLaughlin* v. *Tilendis*, 398 F. 2d 289 (7th Cir. 1968). To hold a union staff representative in contempt of court not because of overt conduct on his part or within his control but as a consequence of his position as a union representative and to heavily fine the Union under the circumstances described above significantly abridges the right of freedom of association protected under the First Amendment as declared in the above cited cases.

CONCLUSION.

The contempt findings involved in this action were based upon an order which was violative of state law as found by the Court below. The Thirteenth Amendment rights involved remove this case from the scope of *Walker* v. *City of Birmingham*, 388 U. S. 307 (1967), since no court has ever held that an individual must submit to involuntary servitude until orderly judicial review will liberate him. In addition, the use of the contempt powers of the court not for the purpose of punishing for contempt but rather to discourage public employees from participating in union activity is violative of the right of freedom of association guaranteed by the First Amendment. And finally, the holding of an innocent man in contempt of court for the purpose of creating an effect upon others is violative of basic principles of due process of law under the Fourteenth Amendment. It is therefore respectfully submitted that the issues

involved herein are of sufficient importance to warrant the issuance of a writ of certiorari to review the decision of the Supreme Court of Illinois.

Respectfully submitted,

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APPENDIX A.

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ILLINOIS

Peoria County,

General Division.

COUNTY OF PEORIA,
Plaintiff,
vs.
HAROLD L. BENEDICT, ET AL.,
Defendants.
} Case No. 68E-4491.

ORDER.

Now on this day come the said Plaintiff by Robert S. Calkins, State's Attorney by Michael M. Mihm and Thomas J. Penn, Jr., Assistant State's Attorneys, and said Defendants with Kleiman, Cornfield and Feldman, their attorneys.

Now this cause comes on to be heard before the Court upon the Complaint and Answer; thereupon the Court heard the opening statements of Counsel on the part of said Plaintiff and said Defendants and the evidence of sworn witnesses adduced herein on the part of said Plaintiff, and at the close of said Plaintiff's evidence, said Plaintiff rests.

Thereupon the Court heard the evidence of sworn witnesses adduced herein on the part of said Defendants, and at the close of said Defendants' evidence, said Defendants rest.

Now it appears to the Court that there is no evidence in rebuttal to be offered on the part of said Plaintiff.

Now said Plaintiff and said Defendants waive their right to offer closing arguments.

Now the Court having heard the evidence of sworn witnesses adduced herein and being now sufficiently advised in the premises finds that the preliminary injunction heretofore ordered by the Court should be made permanent.

THEREUPON IT IS ORDERED AND ADJUDGED BY THE COURT, upon the finding of the Court, as aforesaid, that the preliminary injunction be and the same is hereby made permanent.

Now this cause comes on to be heard before the Court upon the Rule on Defendants to show why they should not be held in contempt of Court for violation of the Court Order entered November 29th, 1968.

Thereupon the Court advises the Defendants of their right to Counsel and to a trial by a Jury or the Court without a Jury. Now said Defendants waive their right to a trial by a Jury, and announce that they are ready to proceed to trial on the merits before the Court without a Jury.

Thereupon the Court heard the evidence of sworn witnesses adduced herein on the part of said Plaintiff, and at the close of said Plaintiff's evidence, said Plaintiff rests.

Now it appears to the Court that there is no evidence to be offered on the part of said Defendants.

Thereupon the Court heard closing arguments of Counsel on the part of said Plaintiff and said Defendants.

Now the Court having heard the evidence adduced herein and the arguments of Counsel thereon and being now sufficiently advised in the premises doth find as follows:

That Local 241, Council 44, of the American Federation

of State, County and Municipal Employees, AFL-CIO, Harold L. Benedict, Nona Rowden, Virginia King, Ruth Monroe, Millie Adams, Mary Kelly, Sally Schoaf, Dorothy Suddeth, Evelyn Defreitas, Sharon Stear, Eleanor Largent, Robert Hooper, Cherry Buchanan and Ruth Hinners are each found to be in contempt of this Court for violation of the Court Order entered November 29th, 1968.

That a fine in the amount of Four Hundred Dollars ($400.00) each day from December 1, 1968 to and including December 6, 1968, the day an interim order was entered by this Court, should be assessed against Local 241, Council 44, of the American Federation of State, County and Municipal Employees, AFL-CIO, making a total fine of Two Thousand Four Hundred ($2,400.00) Dollars.

That a fine of Fifteen Hundred ($1,500.00) Dollars and a Jail Term of Sixty (60) days should be assessed against Harold L. Benedict; and, that fines of Fifty ($50.00) Dollars should be assessed against each of the following Defendants:

Nona Rowden
Virginia King
Ruth Monroe
Millie Adams
Mary Kelly
Sally Schoaf
Dorothy Suddeth
Evelyn Defreitas
Sharon Stear
Eleanor Largent
Robert Hooper
Cherry Buchanan
Ruth Hinners

THEREUPON IT IS ORDERED, ADJUDGED AND DECREED BY THE COURT, upon the finding of the Court, as aforesaid, that said Plaintiff, County of Peoria, do have and recover of and from the Defendant, Local 241, Council 44, of the American Federation of State, County and Municipal Employees, AFL-CIO a fine in the amount of Two Thousand Four Hundred ($2,400.00) Dollars;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT, upon the finding of the Court, as aforesaid, that said Plaintiff, County of Peoria, do have and recover of and from the Defendant, Harold L. Benedict, a fine in the amount of Fifteen Hundred ($1,500.00) Dollars;

IT IS FURTHER ORDERED AND ADJUDGED BY THE COURT, that the Defendant Harold L. Benedict be taken from the bar of this Court to the common Jail of Peoria County, Illinois and be delivered to the Warden or Keeper of said common Jail and said Warden or Keeper is hereby required and commanded to take the body of said Defendant, Harold L. Benedict from and after the delivery thereof and confine him in said common Jail in safe and secure custody for and during the term of sixty (60) days or until discharged by law.

IT IS FURTHER ORDERED BY THE COURT THAT MITTIMUS ISSUE but the execution by the Sheriff thereof be and the same is hereby stayed until January 13, 1969.

THEREUPON IT IS ORDERED AND ADJUDGED BY THE COURT, upon the finding of the Court, as aforesaid, that said Plaintiff, County of Peoria, do have and recover of and from the Defendant, Nona Rowden, a fine in the amount of Fifty ($50.00) Dollars.

IT IS FURTHER ORDERED BY THE COURT that the above fine be suspended pending the Defendant, Nona Rowden's compliance with the permanent injunction.

THEREUPON IT IS ORDERED AND ADJUDGED BY THE COURT, upon the finding of the Court, as aforesaid, that said Plaintiff, County of Peoria, do have and recover of and from the Defendant, Virginia King, a fine in the amount of Fifty ($50.00) Dollars.

IT IS FURTHER ORDERED BY THE COURT that the above fine be suspended pending the Defendant Virginia King's compliance with the permanent injunction.

THEREUPON IT IS ORDERED AND ADJUDGED BY THE COURT, upon the finding of the Court, as aforesaid, that said Plaintiff, County of Peoria, do have and recover of and from the Defendant, Ruth Monroe, a fine in the amount of Fifty ($50.00) Dollars.

IT IS FURTHER ORDERED BY THE COURT that the above fine be suspended pending the Defendant Ruth Monroe's com pliance with the permanent injunction.

THEREUPON IT IS ORDERED AND ADJUDGED BY THE COURT, upon the finding of the Court, as aforesaid, that said Plaintiff, County of Peoria, do have and recover of and from the Defendant, Millie Adams, a fine in the amount of Fifty ($50.00) Dollars.

IT IS FURTHER ORDERED BY THE COURT that the above fine be suspended pending the Defendant Millie Adam's compliance with the permanent injunction.

THEREUPON IT IS ORDERED AND ADJUDGED BY THE COURT, upon the finding of the Court, as aforesaid, that said Plaintiff, County of Peoria, do have and recover of and from the Defendant, Mary Kelly, a fine in the amount of Fifty ($50.00) Dollars.

IT IS FURTHER ORDERED BY THE COURT that the above fine be suspended pending the Defendant Mary Kelly's compliance with th epermanent injunction.

THEREUPON IT IS ORDERED AND ADJUDGED BY THE COURT, upon the finding of the Court, as aforesaid, that said Plaintiff, County of Peoria, do have and recover of and from the Defendant, Sally Schoaf, a fine in the amount of Fifty ($50.00) Dollars.

IT IS FURTHER ORDERED BY THE COURT that the above fine be suspended pending the Defendant Sally Schoaf's compliance with the permanent injunction.

THEREUPON IT IS ORDERED AND ADJUDGED BY THE COURT, upon the finding of the Court, as aforesaid, that said Plaintiff,

County of Peoria, do have and recover of and from the Defendant, Dorothy Suddeth, a fine in the amount of Fifty ($50.00) Dollars.

IT IS FURTHER ORDERED BY THE COURT that the above fine be suspended pending the Defendant Dorothy Suddeth's compliance with the permanent injunction.

THEREUPON IT IS ORDERED AND ADJUDGED BY THE COURT, upon the finding of the Court, as aforesaid, that said Plaintiff, County of Peoria, do have and recover of and from the Defendant, Evelyn Defreitas, a fine in the amount of Fifty ($50.00) Dollars.

IT IS FURTHER ORDERED BY THE COURT that the above fine be suspended pending the Defendant Evelyn Defreitas's compliance with the permanent injunction.

THEREUPON IT IS ORDERED AND ADJUDGED BY THE COURT, upon the finding of the Court, as aforesaid, that said Plaintiff, County of Peoria, do have and recover of and from the Defendant, Sharon Stear, a fine in the amount of Fifty ($50.00) Dollars.

IT IS FURTHER ORDERED BY THE COURT that the above fine be suspended pending the Defendant Sharon Stear's compliance with the permanent injunction.

THEREUPON IT IS ORDERED AND ADJUDGED BY THE COURT, upon the finding of the Court, as aforesaid, that said Plaintiff, County of Peoria, do have and recover of and from the Defendant, Eleanor Largent, a fine in the amount of Fifty ($50.00) Dollars.

IT IS FURTHER ORDERED BY THE COURT that the above fine be suspended pending the Defendant Eleanor Largent's compliance with the permanent injunction.

THEREUPON IT IS ORDERED AND ADJUDGED BY THE COURT, upon the finding of the Court, as aforesaid, that said Plaintiff, County of Peoria, do have and recover of and from the

Defendant, Robert Hooper, a fine in the amount of Fifty ($50.00) Dollars.

IT IS FURTHER ORDERED BY THE COURT that the above fine be suspended pending the Defendant Robert Hooper's compliance with the permanent injunction.

THEREUPON IT IS ORDERED AND ADJUDGED BY THE COURT, upon the finding of the Court, as aforesaid, that said Plaintiff, County of Peoria, do have and recover of and from the Defendant, Cherry Buchanan, a fine in the amount of Fifty ($50.00) Dollars.

IT IS FURTHER ORDERED BY THE COURT that the above fine be suspended pending the Defendant Cherry Buchanan's compliance with the permanent injunction.

THEREUPON IT IS ORDERED AND ADJUDGED BY THE COURT, upon the finding of the Court, as aforesaid, that said Plaintiff, County of Peoria, do have and recover of and from the Defendant, Ruth Hinners, a fine in the amount of Fifty ($50.00) Dollars.

IT IS FURTHER ORDERED BY THE COURT that the above fine be suspended pending the Defendant Ruth Hinner's compliance with the permanent injunction.

Now on motion of said Plaintiff it is ordered by the Court that this cause be and the same is hereby continued generally as to the Defendants, Catherine Campen, Betty Rudloff, Mary Morgan, Earl Smith, Thelma Thome and Ada Lane.

Now on motion of said Plaintiff it is ordered by the Court that this case be and the same is hereby dismissed as to the Defendant Doris Smith.

Now it is ordered by the Court that the appeal bond herein be and the same is hereby fixed in the amount of Five Thousand ($5,000.00) Dollars.

.....

Judge of the Tenth Judicial Circuit

APPENDIX B.

IN THE SUPREME COURT OF ILLINOIS.

Docket No. 42160—Agenda 45—September, 1970.

THE COUNTY OF PEORIA, Appellee, *vs.* HAROLD L. BENEDICT *et al.*, Appellants.

MR. JUSTICE KLUCZYNSKI delivered the opinion of the court:

This is an appeal by defendants, labor union Local 241, its staff representative, Harold Z. Benedict, and 13 individual employees of the Peoria County Bel-Wood Nursing Home from an order of the circuit court of Peoria County making permanent a preliminary injunction, and holding defendants in contempt for violation of the preliminary injunction.

The cause presents essentially two main inquiries: (1) whether the preliminary injunction enjoining a strike and picketing by employees of a county nursing home violated the first, thirteenth and fourteenth amendments to the Federal constitution, section 14 of Article II of the Illinois Constitution, and the Illinois anti-injunction act; and (2) whether the contempt order for violation of that preliminary injunction infringed constitutional doctrines.

The county of Peoria operates the Bel-Wood Nursing Home for the benefit of residents of Peoria County, pursuant to statutory authorization. (Ill. Rev. Stat. 1969, ch. 34, par. 303.) During November, 1968, there were some 236 patients residing in the Home, of which 156 were infirm. The non-supervisory employees of the Home are members of Local 241, American Federation of State, County

and Municipal Employees Union, and comprise 88 of the 104 employees of the Home.

With respect to the wage dispute involved here, in 1968 the superintendent of the Home advised Local 241 that he would recommend that the county board grant the employees of the Home a 10% wage increase for the fiscal year 1969, however, the county board offered only a 7% increase. Despite numerous negotiation meetings in which defendant Benedict participated, there was no agreement on wages between the union and the Board. About a week before November 30, 1968, the superintendent of the Home knew from statements of Benedict in the news media that there might be a strike on November 30 if the union demands were not met, and some preparation was made by the officials of the Home in the event of such strike.

On Wednesday, November 27, the day before Thanksgiving, Benedict was notified by telephone at 3:00 P.M., and Nina Kerley, the secretary-treasurer of the Union, was served with written notice at 8:00 P.M. that a hearing on the county's complaint for an injunction against any strike would be held at 10:00 A. M. on November 29. At that hearing defendants did not appear and the court issued a temporary injunction restraining the union and defendants from conducting a strike against the county, from any work stoppage, and from setting up any picket lines on the property of the Bel-Wood Nursing Home. The injunctive writ was served on all defendants before November 30.

Notwithstanding the issuance of the injunction, at midnight on November 30, eight nurses aides on the 11:00 P.M. shift checked out and, between November 30 and December 6, none of the 88 employees who were members of the union reported for work. It is uncontroverted that defendant employees picketed in front and rear of the Home on county property with signs stating that a strike was in

progress; that Benedict was observed picketing at the Home, and that he advised the pickets in their conduct. There was also evidence that the infirm patients had to be transferred to nearby private nursing homes; that the pickets threw roofing nails on the driveways, and harassed the volunteers who assisted at the Home.

On December 3, 1968, plaintiff filed a petition for a rule to show cause why certain individuals should not be held in contempt for violating the temporary injunction. On December 6 the court entered an interim order granting defendants leave to file motions and supporting briefs to dismiss the complaint, vacate the injunction and dismiss the rule to show cause. That interim order also authorized controlled picketing, and specified that a skeletal union work crew maintain minimum care for the patients at the Home pending a determination of the legality of the injunction, and continued the cause until January 2.

On January 2, 1969, the court, after noting there was no misconduct on the scene after December 6, ruled that the preliminary injunction be made permanent. The court on the same date also held a hearing on plaintiff's rule to show cause. Their counsel admitted that the temporary injunction had been violated but pleaded mitigating circumstances, including defendants' limited education. The court entered a contempt order imposing a fine of $2400 against the union, a fine of $1500 and a 60-day jail sentence against defendant Benedict, and $50 fines each against 13 defendant employees. The fines against the 13 employees were to be suspended upon compliance with the permanent injunction. Defendants have appealed therefrom directly to this court.

Defendants argue first that the preliminary injunction constituted a prior restraint on speech and imposed servitude in violation of the first, thirteenth and fourteenth

amendments to the Federal constitution, and section 14 of Article II of the Illinois constitution. We are cognizant that the United States Supreme Court has rejected the position that the first and fourteenth amendments afford the same kind of freedom to those who communicate ideas by conduct, such as picketing, as to those who communicate ideas by pure speech. (*Cox* v. *Louisiana,* 379 U. S. 536, 555, 13 L. Ed. 2d 471, 85 S. Ct. 453; *Walker* v. *City of Birmingham,* 388 U. S. 307, 316, 18 L. Ed. 2d 1210, 87 S. Ct. 1824.) We are also aware of the Supreme Court's emphasis that prior restraints of expression bear a "heavy presumption against constitutional validity." (*Carroll* v. *President and Commissioners of Princess Anne,* 393 U. S. 175, 181, 21 L. Ed. 2d 325, 331, 89 S. Ct. 347; *Freedman* v. *Maryland,* 380 U. S. 51, 57, 13 L. Ed. 2d 649, 85 S. Ct. 734.) However, as in *Carroll,* we do not reach the thorny problem of the constitutionality of the preliminary injunction in this case, either under the Federal or Illinois constitution, inasmuch as the cause can properly be adjudicated on other grounds.

In *Peters* v. *South Chicago Community Hospital,* 44 Ill. 2d 22, we held the Illinois anti-injunction law applicable to employees of a non-profit hospital. For the same reasons stated therein, we find the anti-injunction act (Ill. Rev. Stat. 1967, ch. 48, par. 2a) applicable to the instant case. That Act provides: "No restraining order or injunction shall be granted by any court of this State, * * * in any case involving or growing out of a dispute concerning terms or conditions of employment, * * *." Accordingly, the preliminary injunction was erroneously issued. Nevertheless, that injunction, while in force cannot be disregarded. Decisions of the United States Supreme Court and the Illinois Supreme Court have unequivocally held that where employees believe an injunction may have been improvidently issued they must first seek and obtain a judicial determination of its legality, and cannot disregard its mandate or

violate its prohibitions with impunity. *Walter* v. *City of Birmingham,* 388 U. S. 306, 320, 321, 18 L. Ed. 2d 1210, 87 S. Ct. 1824; *United States* v. *United Mine Workers of America,* 330 U. S. 258, 293, 91 L. Ed. 885; *Howvat* v. *Kansas,* 258 U. S. 181, 66 L. Ed. 550; *Board of Education, Kankakee School Dist.* v. *Kankakee Federation of Teachers,* Docket No. 42506, September Term, 1970; *Faris* v. *Faris,* 35 Ill. 2d 305, 309.

In *Walker,* the United States Supreme Court held that, notwithstanding the facts that the generality of the parade ordinance and the vagueness of the injunction raised substantial constitutional questions, the petitioners were not free to disobey the injunction. The court (388 U. S. at 330) gave approbation to the rule that while an unconstitutional statute is a nullity, and may not form the basis of any legal right or proceeding, yet, until its constitutionality has been judicially declared in appropriate proceedings no person charged with its observance, under an order or decree, may disregard or violate the order with immunity from a charge of contempt of court.

In the same vein, this court recently stated in the *Kankakee School District* case: "The simple and logical rationale of these decisions is that where a court of equity issues an injunction, with jurisdiction of the subject matter and the persons, and upon pleadings properly invoking its action, the injunction must be obeyed, however erroneous the action of the court may be, until it is reversed for error by orderly review, either by the court itself, or a higher court. Disobedience of such an injunction is contempt of the lawful authority of the court and punishable as such. [Citation.]" 46 Ill. 2d at .....

The circuit court here, as in the *Kankakee* case, in issuing the preliminary injunction had jurisdiction over the subject matter and over the defendants. (Ill. Rev. Stat. 1969, ch. 69, pars. 1, 3.) In accordance with the statutory

requirement notice was given on November 27 by phone to defendant Benedict and by written service on the secretary-treasurer of the defendant union, of the hearing to be held on November 29. Unlike *Carroll,* there was full compliance here with the procedural safeguards. That the hearing on November 29 was *ex parte* was the result of defendants' choice not to appear, and not because of arbitrary action by the plaintiff or the court. Although earlier notice might have been more convenient, in view of the impending holiday, nevertheless defendants did not see fit to request a continuance on November 29, but chose instead to ignore the hearing and to proceed with the strike on November 30 in complete disregard of the issuance of the temporary injunction with which they were admittedly served.

Under these circumstances defendants' violation of its prohibitions and restraints warranted punishment for contempt. The permanent injunction is hereby vacated and the order of the circuit court imposing the sentences for contempt is hereby affirmed.

Affirmed in part and reversed in part.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 1430

HAROLD BENEDICT, LOCAL 241, COUNCIL 44, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO; VIRGINIA KING; MILLIE ADAMS; NONA ROWDEN; RUTH MONROE; MARY KELLY; SALLY SCHOAF; EVELYN DEFREITAS; ELEANOR LARGENT; CHERRY BUCHANAN; DOROTHY SUDDETH; SHARON STEAR; ROBERT HOOPER and RUTH HINNERS,
Petitioners,

vs.

COUNTY OF PEORIA,
Respondent.

ANSWER TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. .....

HAROLD BENEDICT, LOCAL 241, COUNCIL 44, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO; VIRGINIA KING; MILLIE ADAMS; NONA ROWDEN; RUTH MONROE; MARY KELLY; SALLY SCHOAF; EVELYN DEFREITAS; ELEANOR LARGENT; CHERRY BUCHANAN; DOROTHY SUDDETH; SHARON STEAR; ROBERT HOOPER and RUTH HINNERS,
Petitioners,

vs.

COUNTY OF PEORIA,
Respondent.

ANSWER TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

Respondent, County of Peoria, hereby respectfully prays that the petition for writ of certiorari by the petitioners for the review of the decision of the Supreme Court of Illinois entered in this cause on December 4, 1970, affirming the contempt sentences in the order of the Circuit Court of the Tenth Judicial Circuit of Illinois, Peoria County, in this cause entered on January 2, 1969, be denied.

OPINIONS BELOW

The decisions of the Circuit Court of the Tenth Judicial Circuit of Illinois entered on January 2, 1969 and of the Supreme Court of Illinois entered on December 4, 1970 are attached and appended to the petition.

QUESTION PRESENTED

1. Whether a party may ignore a court order claimed to be improper or unconstitutional before testing legality of the order by proper proceedings.

STATEMENT OF THE CASE

The County of Peoria operates the Bel-Wood Nursing Home for the benefit of residents of Peoria County pursuant to legislative enactment. During November, 1968, there were 236 patients residing in the home (page 30) of which 156 were bedridden and 80 were ambulatory (page 31). The charge made, or the patient rate for the care is determined by the total cost of running the home divided by the number of patients residing in the home (pages 7-8). For those patients who are indigent, care is provided by public funds.

The non-supervisory employees of the home are members of the Local 241, American Federation of State, County and Municipal Employees International Union. During the latter part of 1968 the members of the union and the nursing home committee of the County Board of Supervisors for Peoria County had discussed the wage scale for the forthcoming year, 1969. Mr. Harold Benedict, the business agent (page 106), for Local 241 and members of his committee rejected the offers made by the nursing home committee of the County Board of Supervisors as insufficient (pages 84-85, 130). Around November 15, 1968, Mr. Harold Benedict made public pronouncements by way

of newspaper and television that unless the demands of the union were met, the Local 241 would go on strike commencing midnight, November 30, 1968 (pages 76, 87). Of the 104 employees of the hospital, which includes the nursing staff, 88 were members of the union (page 31).

On November 27, 1968 at 3 P.M., Nina Kerley, the secretary-treasurer of Local 241, and Harold Benedict received notice of a hearing on a complaint for an injunction by the County of Peoria, set for Friday, November 29, 1968 at 10 A.M. (C-2) requesting an order enjoining the union and individual members from work stoppage and picketing at the Bel-Wood Nursing Home. Telephonic notice to Nina Kerley was followed by actual service of the complaint for injunction and notice of hearing on November 27, 1968 (C-3).

On November 29, 1968, at 10 A.M. when the defendants failed to appear for the hearing, the Court considered the verified complaint of the County of Peoria (C-11–C-16), and ordered the Clerk of the Circuit Court to issue an injunction writ commanding the Local 241 and the individual defendants to:

> "restrain from conducting a strike against the County of Peoria; that you are jointly and severally enjoined from conducting any walkout or work stoppage at the Peoria County Nursing Home; from setting up any picket lines at or near or upon the property of the Peoria County Bel-Wood Nursing Home in Peoria County" (C-18).

The service of the injunctive writ and a copy of the complaint for injunction were served upon all the defendants before November 30, 1968 (C-20–C-102), with a written warning included in the injunction that failure to obey the temporary injunction would subject them to punishment for contempt of the court.

No motion to vacate the temporary injunction or motion to discharge the injunction was filed by any of the petitioners before the members of the union on duty November 30, 1968 walked off the job and set up picket lines on the nursing home property (pages 62, 65). During the week that followed, none of the members of the union reported for work (page 94). As the strike continued, the picketers obstructed and harassed volunteers who appeared to care for the patients (page 83), placed railroad ties across the entrances to the nursing home property to obstruct traffic (page 82), and threw roofing nails on the driveways into the property (pages 82 and 98). The picketing activity took place on the premises of the Bel-Wood Nursing Home (page 62). Harold Benedict, the business agent, was observed at the picketing activities (page 97), and indeed, admitted encouraging and advising the pickets (pages 106-107).

On December 3, 1968, the County filed a Petition for Rule to Show Cause why Local 241 and individual defendants should not be held in contempt of court and petition was granted setting the hearing on the order to show cause for December 6, 1968 (C-104–C-107). A lengthy conference was held on December 6, 1968, at which the defendants' attorneys were present (page 115), and an interim order was entered by the Court providing for a skeleton crew of union members at the home and limiting the number of pickets until such time as the Rule to Show Cause could be heard. Provision was also made for time for the defendants to file motions attacking the temporary order.

The County having filed a motion to make the temporary injunction permanent, the Court held a hearing on that motion on January 2, 1969 and thereafter held a hearing on the Rule to Show Cause. On the motion to make the temporary injunction permanent, seven witnesses were presented by the County and one witness was presented on

behalf of the petitioners. The Court having heard the evidence entered an order making the temporary order permanent. The Court then proceeded with a hearing on the Rule to Show Cause, but first granted the petitioners a trial by jury which they waived. Nine witnesses were called by the County and no witnesses were called by the petitioners. The Court having heard the evidence found Local 241 to be in contempt of the November 29, 1968 order and assessed a fine. Harold Benedict was held in contempt of the same orders and was given a fine and a jail term. The other appealing petitioners were assessed a fine until they complied with the permanent injunctive order entered on January 2, 1969.

On an appeal to the Supreme Court of Illinois, the Court issued its opinion on December 4, 1970, holding that the permanent injunction was invalid under Illinois' Anti-Injunction Act (Ill.Rev.St., Ch.48, Sec.2a) which prohibited the issuance of injunctions in labor disputes but upheld the sentences for contempt of the temporary injunction dated November 29, 1968.

REASONS FOR DENYING THE WRIT

The whole purpose of the temporary or preliminary injunction is to maintain the status quo. The petitioners attacked the propriety of that order as a violation of the Illinois Anti-Injunction Act. The Court had the jurisdiction to enter a temporary injunction (Ill. Rev.St., 1969, Ch.69, Sec.1), but the issue was whether the Anti-Injunction Act limited the use of the power. Briefs were filed by each party over a period of time on that point. The Trial Court could have waited until after the briefs and authorities were submitted to determine the propriety of the issuance of the order, but it is obvious that the status quo would not have been maintained. More than 200 patients, many of who were bedridden, were without care when the employees walked out except for the few volun-

teers who came to help. Those patients who could not do for themselves had to be fed and clothed whether or not a labor dispute existed between the home and its employees. From the record, the Trial Court's first interest was an attempt to resolve the dispute between the parties without making the patients of the Bel-Wood Nursing Home pay the price of deprivation of care. A strike, while the Court determined the application of the Illinois Anti-Injunction Act, could wait, but surely the care of these 156 bedridden patients could not wait. The only way to preserve the existing conditions while the Court determined the petitioners' right to strike was to issue a temporary or preliminary injunction.

This Court used the same rationale in **Treines v. Sunshine Min. Co.**, 308 US 66, 84 L Ed 85, 60 S.Ct. 44. The Court was of the opinion that a violation of such a temporary order gave the Trial Court the right to punish the violation thereof as contempt.

The petitioners were given ample opportunity to appear at every stage, from the issuance of the preliminary order until the time it was made permanent. They did not appear, did not request a continuance for the purpose to obtain counsel to make an appearance before the temporary order was issued. They did not file a motion to vacate the order or to discharge it after it was entered. The petitioners attempted to excuse their conduct on the grounds that either the temporary order was erroneous or that it was unconstitutional in its application to them.

The Illinois Supreme Court, relying on **Faris v. Faris,** 35 Ill. 2d 305, found that the temporary order must be obeyed by the parties until it is reversed by orderly and proper proceedings, even without regard to the constitutionality of the order issued. This Court has long adhered to that proposition. **United States v. United Mine Workers,** 330 US 258, 293, 91 L.Ed. 885. Therefore, the constitu-

tional grounds for this petition, even if true, would not be a proper basis for review of the decision of either the Supreme Court of Illinois or the Trial Court. The petitioners ignored the Trial Court and its order and instead made their own collective decision of what the law was or ought to be, and freely, voluntarily and knowingly disregarded the preliminary injunction. Whether or not the order was erroneous or unconstitutional, it is their premeditated disobedience of the Court and its order which is punishable as contempt. The interest of our courts in the orderly administration of justice far outweighs the personal interests of these petitioners. What is left of society if anyone, for any reason, may choose to disregard any court order not to his liking?

Even those constitutional violations which the petitioners claim excused them from obeying the temporary order do not exist. No constitutional guarantees were denied the defendants when a temporary injunction was entered.

Petitioner Harold Benedict claims that his First and Fourteenth rights were violated when the contempt findings were based upon his union representation rather than his own conduct. He claims that the order against him was based solely on this union affiliation. This contention that he was not involved in the picketing activities has been presented now for the third time. It was the trial Court that heard the evidence and made a determination of fact. The Supreme Court of Illinois in affirming the contempt conviction of petitioner, Harold Benedict, stated "It is uncontroverted that defendant employees picketed in front and rear of the home on County property with signs stating that a strike was in progress; that Benedict was observed picketing at the home, and that he advised the pickets in their conduct." That conduct constitutes a violation of the temporary order. It is the same conduct on the part of other members of the union who had been served with the temporary injunction which caused them

to also be held in violation of the temporary order. A writ should not be issued by this Court to review an issue of fact.

Nothing in that order denies any petitioner the right to participate in union activities or to belong to a labor union organization. Nothing in that order violated his protected right of freedom of association. The petitioners' prior First Amendment complaints have been that the temporary order was an invasion of their right to freedom of speech. Just as this Court in **Walker v. The City of Birmingham,** 388 US 307, 818 L. Ed. 2d 1210, 87 S.Ct. 1824, held that communication by conduct does not enjoy the same privilege as communication by pure speech, neither does the freedom to associate protect all conduct while so associated. These petitioners could have appeared at the Court on the day that the temporary injunction was issued to make their objections. They had been given notice of the pending hearing and had been invited to participate in the proceedings. This is all that the amendments require. **Carroll v. Commissioners of Princess Anne County,** 393 US 175, 21 L. Ed. 2d 325, 89 S.Ct. 347; **Freedman v. Maryland,** 380 US 51 at 58, 13 L. Ed. 2d 649, 85 S.Ct. 734.

Likewise, the record does not support any violation of the guarantees of the Thirteenth Amendment to these petitioners. No one ordered them to work at the Bel-Wood Nursing Home and the injunction writ served upon each of the petitioners, as demonstrated by the record on page C-18, does not mention that the petitioners had to return to work. What they claim is, that the order signed by the Trial Court on November 29, 1968 directing the Clerk of the Court to issue the injunction writ contained some language concerning their return to work. The petitioners maintain that this language confused them although it is plain on the face of the order that the language was stricken from it by the Court and was never intended to be a part of the writ. Secondly, there was no testimony by

any of the petitioners that any of them saw the order signed by Judge Robert E. Hunt on November 29, 1968. How can they become confused by an order they didn't see until after they ignored it? The record firmly establishes however that each and every one of them received the injunction writ prior to the time they began the strike. If they had appeared at the hearing for the issuance of the temporary injunction any attack on it regarding alleged Thirteenth Amendment guarantees could have been made.

CONCLUSION

The petitioners claim that they did not have to obey the temporary injunction issued by the Trial Court because it was wrong. They have failed to advise the Court that at the time the order was entered it conformed with the decisional law of State of Illinois concerning strikes by public employees. It was more than a year after these petitioners walked off their jobs that the Supreme Court of Illinois altered its prior position and indicated that all public employees but teachers had the right to strike. **Board of Education v. Redding,** 32 Ill. 2d 567 at 571; **Peters v. South Chicago Community Hospital,** 44 Ill. 2d 22. At the very least, the petitioners thought the law prohibited strikes by public employees when they ignored the temporary order.

The petitioners now claim that properly they could ignore the temporary order because it violated the Thirteenth Amendment guarantees. The injunction writ served upon each of the petitioners prior to the commencement of the strike only prohibited striking and picketing. It did not force them to work and at any time they could terminate their employment. Their claim of the abridgement of that right is more sound than substance.

Petitioner Harold Benedict, the business agent for the union, also claims that his First Amendment rights of

freedom of association were violated by the order and therefore he could ignore the temporary order. Now, for the third time, he charges that there was no evidence of his conduct violating that order. Making that assumption, he continues that he was held in contempt merely because of his union association. A Writ of Certiorari may not be used to review a question of fact. The Trial Court held that he was indeed participating in the strike by his conduct as well as his words and the Supreme Court of Illinois found that the records supported the contempt citation on that ground. Harold Benedict was held in contempt because he wilfully ignored the temporary order when he participated in the strike activities.

This Court has held on many occasions that one may not ignore a court order where the court had jurisdiction of the person and the subject matter but must seek judicial review of it. None of the issues raised by the petitioners indicates that the Court was without jurisdiction to issue injunction writs or that the petitioners had not been forewarned of its issuance. They had been given an opportunity to participate in the hearing. The issues presented in the appeal do not warrant review by this Court. Therefore, the Respondent, County of Peoria, respectfully prays that the Court deny the Petition for Writ of Certiorari to review the decision of the Supreme Court of Illinois.

Respectfully submitted

ROBERT S. CALKINS
State's Attorney

ROLAND N. LITTERST
Assistant State's Attorney
Attorneys for Respondent